



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

1200 Sixth Avenue
Seattle, WA 98101

February 6, 2003

Reply To
Attn Of: ECL-112

Commander, Ft. Lewis
Directorate of Public Works
ATTN: AFZH-DEQ MS 17 (Mr. Eric Waehling)
Building 2012, Room 323
Ft. Lewis, WA 98433-9500

Re: Camp Bonneville – CERCLA Response Actions
Administrative Record Deficiencies - Noncompliance with the CERCLA and National
Contingency Plan

Dear Eric:

I am writing to notify the Department of Army, Fort Lewis of the significant noncompliance with the administrative record and public participation requirements of the Comprehensive Environmental Restoration, Compensation, and Liability Act (CERCLA) and the NCP of which EPA has recently learned. In working with the Restoration Advisory Board (RAB) to ensure important documents were available for review, EPA recently discovered that many key documents were missing from the information repository and that the Army's compilation and maintenance of administrative records for CERCLA response actions at Camp Bonneville does not comply with law. Additionally, the Army has not notified the public concerning the administrative record and response actions it has taken as required by law.

The Army has been investigating and conducting response actions at Camp Bonneville for over 6 years. However, the Army just developed its administrative record index on January 27, 2003, which is an egregious violation of the statutory and regulatory requirements. We have attached a copy of the "index" recently received for Camp Bonneville. Furthermore, this index indicates that the administrative records for each response action do not exist.

CERCLA Section 113(k) requires the establishment of administrative records upon which the President shall base the selection of a response action. 42 U.S.C. §9613(k). The National Contingency Plan provides further direction on the compilation, maintenance, and public availability of administration records. 40 CFR Part 300, Subpart I. Furthermore, EPA has issued guidance on CERCLA administrative records. Attached to this letter is a copy of EPA's guidance.

Since 1996, the Army, Ft. Lewis has conducted numerous investigations at Camp Bonneville. EPA is aware that the Army has taken the following response actions under removal response authorities of CERCLA:

1. Drum Disposal Area (Drums disposed of off-site at Arlington CWM)
2. Hazardous Materials Accumulation Point (material removed via pumping into 55 gallon drums)
3. Paint and Solvent Disposal Area (Debris, paint, and other material sent to CWM)
4. Removal and off-site disposal of washrack 1 area material
5. Maintenance Pit soil removal and off-site disposal
6. Pesticide Storage/Mixing Building 1864 soil removal and off-site disposal
7. Aboveground Storage Tank soil removal and off-site disposal
8. CS Gas Training site soil removal and off-site disposal
9. Pesticide Storage Bldg 4126 soil and debris removal/off-site disposal
10. Ammunition Storage Bunkers #2953, #2951, #2950 removal of soil and off-site disposal
11. Grenade Range geophysics/removal of some anomalies

As you are aware, EPA has commented vigorously that the Army was inappropriately using the removal process (which involves far less public participation and public comment) for many of its cleanup actions, and that remedial action authorities, standards, and processes were more appropriate. That issue, although not the primary topic of this letter, enhances EPA's concern about the failure by the Army to establish administrative records. The Army has been using its response action authorities under CERCLA to conduct cleanup at Camp Bonneville. That being the case, the Army is responsible for complying with all requirements of CERCLA and the NCP. One such requirement is the "Administrative Record and Participation Procedure" requirements of 42 U.S.C. § 9613(k) and 40 CFR Part 300, Subpart I.

The Army has established a RAB at Camp Bonneville. The Army has provided certain documents on proposed cleanup actions to the RAB and sought their comments. Nonetheless, notice to the RAB does not constitute nor does it meet the notice required by 40 CFR § 300.820, or the public participation requirements of 40 CFR §§300.820 and 825.

A few of the most significant deficiencies and violations of law are:

1. A separate administrative record is required for every response action. 40 CFR § 300.800. It appears the Army only kept a chronological file of some relevant documents.
2. There is no evidence that the administrative record for each response was placed in a public repository within regulatory timeframes nor that the record was made available and notice of same was published in a local newspaper. 40 CFR §§ 300.805 and 820.
3. There is no evidence that the Army has taken public comment on any response action, and if it did, the publication of the decision and the public comments received and the Army's responses are not in an administrative record. 40 CFR § 300.820. Furthermore, evidence of compliance with the community relations requirements for each response of 40 CFR § 300.415(m) is not evident from the index.

4. There is no indication that the Department of Ecology's or EPA's comments on the Army's investigation reports, planned cleanup actions, data analysis, or other regulatory technical reviews are contained in the administrative record for each cleanup action the Army chose to take. Thus, there likely are other documents which the Army considered in deciding to take action that are not contained in the record. 40 CFR §300.800(a). All documents that form the basis for the selection of the response are to be placed in the record. Documents required to be included are relevant documents that were relied on in selecting the response action, as well as, relevant documents that were considered but ultimately rejected as a basis for the response action. See Preamble to the NCP (46 Fed. Reg. 8807, March 8, 1990) and EPA AR Guidance.
5. There are no decision documents that comply with the NCP and EPA guidance. In accordance with EPA guidance, if the Army was using removal authorities then an action memorandum is required. Decision documents are required to be in the administrative record as required by 40 CFR §300.825.

EPA is notifying the Army, Ft. Lewis of these violations to ensure that the Army corrects this matter immediately for past cleanup decisions but also complies with the records management requirements of CERCLA for future decisions.

Since Camp Bonneville was placed on the base closure list, the Army has claimed most of their cleanups are time critical removals even though in most, if not all, circumstances it had and took more than 6 months to plan the cleanup. The Army's approach resulted in far less public participation in the cleanup decisions conducted to date. EPA's recent discovery that the Army has not compiled administrative records on all removal actions indicates the Army does not desire to make available to the public all the relevant information about its decisions, before or after they are made.

As stated above, please note that the enclosed index does not include any EPA generated documents. For all of the cleanup actions taken to date, in accordance with 40 CFR § 300.800(b), the Army is requested to place all comments, analysis, and other information provided by EPA and/or an EPA contractor since the beginning of the cleanup process at Camp Bonneville into the appropriate administrative record for the specific response action decision. If the Army does not have all of EPA's documents, EPA will supply another copy. Please provide a list of the EPA documents (which the required index would include) that the Army has and EPA can confirm whether documents are missing.

Please respond to me in writing within ten (10) days of this letter to inform EPA what actions the Army will take to correct these significant deficiencies in implementing its responsibilities under CERCLA. If you have questions about this matter, please call me at (206) 553-1220.

Sincerely,

Sean Sheldrake
Remedial Project Manager

Enclosures: 1) Camp Bonneville index
2) AR guidance

cc:	Steve Hart, Army Counsel	<i>sent via e-mail</i>
	Harry Craig, EPA	“”
	Lori Houck Cora, EPA/ORC	“”
	Nancy Harney, EPA	“”
	David Croxton, EPA	“”
	Ben Forson, Ecology	“”
	Barry Rogowski, Ecology	“”
	Karen Kingston, RAB co-chair	“”
	Brian Vincent, Clark County	“”